

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

76-7459

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO,
Plaintiff-Appellee,

-against-

LOUIS COMMARATO, PRESIDENT AND BUSINESS MANAGER OF
LOCAL UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION AFL-CIO, JOHN M. VAUGHN, FINANCIAL SECRETARY
OF LOCAL UNION NO. 400, SHEET METAL WORKERS' INTERNA-
TIONAL ASSOCIATION, AFL-CIO; FRANCES MAIDA, RECORDING
SECRETARY OF LOCAL UNION NO. 400, SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, AFL-CIO; AND LOCAL UNION NO.
400, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO,

Defendants.

LOCAL UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Defendant-Appellant,

LOUIS COMMARATO, PRESIDENT AND BUSINESS MANAGER OF
LOCAL UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION AFL-CIO,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

CHARLES R. KATZ

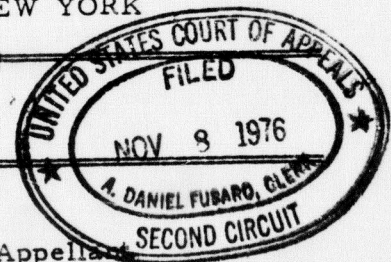
Attorney for Defendant-Appellant and Appellant
360 Lexington Avenue - New York, New York 10017

COHEN, WEISS AND SIMON

Attorneys for Plaintiff-Appellee

605 Third Avenue - New York, New York 10017

(5852)



PAGINATION AS IN ORIGINAL COPY

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Excerpts from Docket Entries

76 CIV. 2279 SHEET METAL WORKERS VS COMMARATO . METZNER, J.

DATE	NR.	PROCEEDINGS
5-20-76	1	Filed complaint and issued summons.
5-24-76	2	Filed pl'tfs. affdt. and OSE-- ORDERED that defts. show cause on May 24, 1976 at 2pm in Rm. 1105 for prel. injunction and restraining order; ORDERED that service be made by May 20, 1976 by 5 p.m. Metzner, J.
5-24-76	3	Filed pl'ts. memorandum of law in support of above OSC.
06-02-76	4)	Filed defts affdvt. in opposition to motion for prel. Injunction.
06-02-76	5)	Filed defts cross-motion under Rule 12(b) to dismiss - ret. 6-4-76 (de-ft. Commarato)
=====		
06-02-76	6)	Filed deft. Commarato's memorandum in opposition to application for a prel. injunction.
06-03-76	7)	Filed defts' memorandum in support of the cross-motion to dismiss complaint.
06-03-76	8)	Filed plaintiff's supplemental memorandum in support of motion for prel. injunction.
06-03-76	9)	Filed pl'tfs exhibit - affdvt. of Edward J. Carlough.
06-09-76	10)	Filed stip. and order ext. defts. Commarato and Local Union #400 time to answer to 6-28-76 -- Metzner, J.
06-11-76	11)	Filed pl'tf's memorandum in opposition to defts' motion to dismiss as against indiv. defts'
06-11-76	12)	Filed defts suppl. memorandum in opposition to appl. for prel. inj.
06-11-76	13)	Filed defts reply affdvt. in opposition to mot. for prel. inj.
07-14-76	14)	Filed stip. and order ext. deft. Commarato's and Local No 400's time to answer to 7-6-76. -- Metzner, J.
07-14-76	15)	Filed stip. and order ext. deft. Commarato's and Local No. 400's time to answer to 7-12-76.
=====		
07-14-76	16)	Filed stip. and order ext. deft. Commarato's and Local No. 400's time to answer to 7-19-76. -- Metzner, J.
7-21-76	17)	Filed stip. and order that the time of defts. Commarato, Local Union #400 Sheet Metal Workers Intl. Assoc. to answer complaint is ext. to July 26, 1976. So ordered, Metzner, J.
7-22-76	18)	Filed memo-endorsed on motion dtd. 6/2/76 -- Motion granted - METZNER, J.
7-22-76	19)	Filed OPINION #44817--An injunction running against Local 400 shall issue. Settle order on notice. Metzner, J. m/n
8-2-76	(20)	Filed counter order--ORDERED that pending conclusion of the trial and condition upon pl'tfs. filing of surety bond in amt. of \$500.00, pl'tfs. are restrained, etc. as indicated. Metzner, J. m/n
8-3-76	(21)	Filed bond #2476305 for undertaking on injunction in amt. of \$500.00 by the National Surety Corp.
7-30-76	(22)	Filed deft. L. Commarato notice to take deposition of persons indicated on 8/27/76.
7-30-76	(23)	Filed defts. ANSWER to complaint.
8-12-76	(24)	Filed Deft. Local 400 Amended Answer to the complaint

CRK

VS
LOUIS COMMARATO ET AL

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
08-16-76	(25) Filed pliffs affdvt. and OSC on 8-20-76 at 10:30 in rm. 506 Ordered that defts show cause why an order should not be granted adjudicating the defts in contempt of court and that personal service should be rendered by 12 noon on 8-16-76 and that answering papers be filed by 12 noon on 8-18-76 Goettel, J.
8-18-76	(26) Fld deft's affid in oppositoin to pliff's application to adjudicate deft's in civil contempt of court.
8-18-76	(27) Fld memorandum in oppositoin to pliff's application to adjudicate defts in civil contempt of court.
08-23-76	(18) Filed stip. and order re defts Local Union No. 400's time to answer to 8-13-76. -- Metzner, J.
08-23-76	(19) Filed order that Louis Commarato and other defendants herein fully comply with order of prol. injunction rendered on 8-2-76 and deliver all documents as indicated. -- Werker, J. m/n
09-16-76	30) Filed pliffs affdvt. and OSC to adjudicate in Civil Contempt the defendants; answering papers to be filed by 9-20-76 -- Metzner, J.
09-16-76	31) Filed stip. and order that all enforcement of the Court's order made 8-20-76 and entered on 8-23-76 by pliff. against defts is hereby stayed until the USCA for the 2nd Circuit determines the stay pending appeal. The hearing scheduled for 9-20-76 is adjourned pending further order of this court. -- Metzner, J.
09-15-76	32) Filed defts Commarato and Local 400's Undertaking for costs on appeal. -- \$250.00 Fireman's Fund.
09-15-76	33) Filed by defts Commarato and deft. Local Union 400, notice of appeal to the USCA for the 2nd Circuit from order modifying the order of 8-22-76 -- m/copy.
09-23-76	34) Filed notice that the record on appeal has been certified and transmitted to the USCA for the 2nd Circuit.

Defendants' Cross Notice of Motion to Dismiss with Order of
Metzner, J. of July 21, 1976 endorsed.

MEMO INDORSED

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Plaintiff,

v.

LOUIS COMMARATO, PRESIDENT AND BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION
AFL-CIO etc., et al,

Defendants.

CIVIL ACTION
NO. 76 CIV 2279

CMM

CROSS NOTICE OF MOTION
PURSUANT TO CIVIL
PROCEDURE 12(b)

S I R S :

PLEASE TAKE NOTICE, that upon all the pleadings and proceed-
ings herein and the affidavit of Louis Commarato, duly verified June 1,
1976, the undersigned will cross move this court on June 4, 1976 at
4:30 P.M. before the Honorable Charles M. Metzner, to dismiss the
complaint against Louis Commarato individually, on the grounds of
lack of jurisdiction over the subject matter as to said defendant
individually, insufficiency of service of process and failure to
state a claim upon which relief can be granted against the individual
defendants.

Dated: June 1, 1976

Yours, etc.

Charles R. Katz
CHARLES R. KATZ
Attorney for Defendant
Louis Commarato and
Local 400
360 Lexington Avenue
New York, New York 10017

Tel. No. [212] 867 - 9140

TO: Cohen, Weiss & Simon
Attorneys for Plaintiff
605 Third Avenue
New York, New York

NOTICE OF ENTRY

Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

19

Dated,

Yours, etc.,

CHARLES R. KATZ

Attorney for

Office and Post Office Address
360 LEXINGTON AVENUE
NEW YORK, N. Y. 10017

o

Attorney(s) for

NOTICE OF SETTLEMENT

Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

of the judges of the within named Court, at

the day of 19 M.

ated,

Yours, etc.,

CHARLES R. KATZ

Attorney for

Office and Post Office Address
360 LEXINGTON AVENUE
NEW YORK, N. Y. 10017

o

Attorney(s) for

CIV. ACTION 76 CIV 2279 CMM

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Plaintiff,

v.

LOUIS COMMARATO, etc., et al,
Defendants.

CROSS NOTICE OF MOTION
PURSUANT TO CIVIL PROCEDURE
12 (b)

CHARLES R. KATZ

Attorney for

Defendant

Office and Post Office Address, Telephone

360 LEXINGTON AVENUE
NEW YORK, N. Y. 10017

TN 7-0140

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

© 2000-GOLDENMITH 0000- 17 MADRAU ST., NEW YORK, N. Y. 10006

July 21, 1976, Motion
granted.
So Ordered
/s/ CMM
USDC

filed
7/22/76
SDNY

Defendants' Cross Notice of Motion to Dismiss with Order of
Dismissal. J. of July 21, 1976 endorsed.

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Opinion of Metzner, J. of July 21, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

SHEET METAL WORKERS' INTERNATIONAL	:	
ASSOCIATION, AFL-CIO,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	76 Civ. 2279
	:	(CMM)
LOUIS COMMARATO, PRESIDENT AND	:	
BUSINESS MANAGER OF LOCAL UNION	:	
NO. 400, SHEET METAL WORKERS'	:	
INTERNATIONAL ASSOCIATION AFL-CIO,	:	
etc., et al.,	:	
	:	
Defendants.	:	
	:	
----- X		

METZNER, D. J.:

Plaintiff Sheet Metal Workers' International Association, AFL-CIO (SMWIA) moves for a preliminary injunction to enforce the order of its General President placing defendant Local Union 400, Sheet Metal Workers' International Association, AFL-CIO (Local 400) under trusteeship of the International. The complaint seeks relief pursuant to Section 301 of the Labor Management Relations Act (LMRA) of 1947, as amended, 29 U.S.C. § 185, and Section 302 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 462.

The facts, as brought before the court on extensive affidavits and exhibits, appear as follows.

Opinion of Metzner, J. of July 21, 1976

As early as September 25, 1975, Edward J. Carlough, General President of SMWIA, received information as to improprieties in the management of Local 400. Through further investigation, Carlough felt that he had sufficient information to place Local 400 under trusteeship pursuant to Article 3, Section 2(c) of the SMWIA Constitution which provides:

"SEC. 2(c). Management of local unions and councils. Whenever a local union or council or the officers or members thereof fail to comply with the provisions of this Constitution or with the policies of this Association; conduct the affairs of such local union or council in a manner which is detrimental to the best interests of such local union, its members or this Association . . . the General President, with the approval of the General Executive Council shall have the authority to take over such control or management of such local union or council as he may deem appropriate." (Emphasis added.)

By telegram of December 9, 1975, the General President requested the approval of the General Executive Council (Council) to put Local 400 in trusteeship as follows:

"Information from reliable sources reveals evidence of serious misconduct on the part of Officers of Local Union 400 (New York City) and I have concluded it is necessary to place Local Union 400 under international management and control pursuant to Article Three, Section 2(c) of International Constitution. Please advise by telegram whether you approve of this action."

All members of the Council replied in the affirmative.

The Council is empowered to enact business by correspondence when it is not in session. SMWIA Constitution, Article Six, Section 3.

Opinion of Metzner, J. of July 21, 1976

Letters were thereafter prepared notifying Local 400 that it was being placed under trusteeship, but these were never formally delivered. Instead, SMWIA sent accountants and auditors to review the books and records of Local 400. These inquiries allegedly showed not only a long-standing failure of Local 400 to make its required payments to the SMWIA, a condition defendants claim was well known to the International, and condoned by it, but that there were members of Local 400 from whom fees were collected without ever being registered with SMWIA, and who received falsified receipts and forms of the International. It is claimed that the International was owed some \$400,000 as a result of these practices. It is pointed out that not only does SMWIA suffer financial loss through such actions, but that the unregistered members lose valuable union privileges.

Based on this information, Carlough, on May 12, 1976, placed Local 400 under trusteeship by letter to the president of Local 400. On May 14, 1976, a telegram was sent to the General Executive Council seeking approval for the appointment of a three-member subcommittee to act on behalf of the Council to hold a hearing on the propriety of Carlough's actions. The Council approved the request. It should be noted that the SMWIA Constitution does not provide for such delegation to subcommittees.

Opinion of Metzner, J. of July 21, 1976

but that the affidavit of the First General Vice President asserts that this has been the general practice of SWMIA.

A hearing was held on May 25, 1976, which was not attended by Local 400 due to its claim that such a hearing was unauthorized by the Constitution. To date, the trustee appointed by SMWIA has been denied entry to Local 400. SWMIA asks that the court enforce the order of the General President.

Section 302 of the LMRDA, 29 U.S.C. § 462, sets forth statutory guidelines for the establishment of trusteeships. That statute states in pertinent part:

"Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice . . . or otherwise carrying out the legitimate objects of such labor organization."

- The Court of Appeals has held that the two conditions for valid imposition of a trusteeship are that (1) the international must follow its own constitutional procedures for imposition, and (2) that the imposition must be for one of the purposes enumerated in Section 302. Executive Board v. United Brotherhood of Carpenters, 477 F.2d 612, 613 (2d Cir. 1973). Furthermore, the judiciary is urged both statutorily (29 U.S.C. § 464(c), imposing an eighteen-month presumption:

Opinion of Metzner, J. of July 21, 1976

of validity under certain circumstances, see infra), and by case decision, to intervene only "with the greatest care and caution." Executive Board v. United Brotherhood of Carpenters, supra at 615.

There is little question here that the trusteeship was imposed to correct corruption or financial malpractice, and thus comes within a stated statutory purpose. It is likewise clear that Article 3, Section 2(c) quoted above provides for a trusteeship in cases where locals fail to follow the policies of SMWIA, or act to the detriment of the best interests of a local union, members, or the International.

The crux of the issue, however, is whether the General President acted within the constitutional limitations in the approval sought from the Council, and whether, absent a provision in the SMWIA Constitution, a hearing held to ratify the imposition of a trusteeship may be held post hoc, and before a subcommittee, rather than the entire Council.

Defendants argue that the notice of December 9 was so vague as to make an informed decision on the part of Council members impossible, and that in any event, a new approval was required to impose the trusteeship in May 1976. Here, the intention of the General President in December was clear and the approval by the Council was effective.

Opinion of Metzner, J. of July 21, 1976

Although the Court of Appeals in this Circuit has withheld decision on whether a hearing is required in order to impose a trusteeship, it has ruled that post hoc ratification is permissible to create the eighteen-month presumption of validity (29 U.S.C. § 464(c)) so long as it is provided for in the Constitution or bylaws of the International. National Association of Letter Carriers v. Sombrotto, 449 F.2d 915 (2d Cir. 1971). A fortiori, such post hoc hearing may ratify the original imposition of the trusteeship.

Section 464(c) provides that such a hearing be conducted by the "executive board or before such other body as may be provided in accordance with its constitution or bylaws." Defendants' misconception is that the statutory provision for the eighteen-month effect of an order also provides the requirement for a due process hearing. The Constitution of the International is silent as to any hearing, and I hold that the procedures here satisfied the requirements of due process.

Against this background and the fact that the factual allegations of the plaintiff remain essentially unrefuted, the court is forced to conclude that the plaintiff shows a strong probability of success on the merits. This, coupled with the obvious showing of irreparable harm involved with the potential further

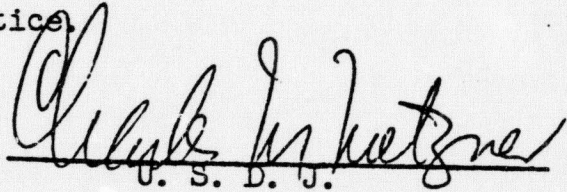
Opinion of Metzner, J. of July 21, 1976

continuation in power of the individual defendants, makes the granting of a preliminary injunction proper. This is particularly true in view of the judicial policy to support the process of imposition of trusteeships under union determination. Cf. Executive Board v. United Brotherhood of Carpenters, supra.

An injunction running against Local 400, its officers, agents, etc., shall issue.

Settle order on notice.

Dated: New York, N. Y.
July 21, 1976


U. S. D. J.

Counter-Order of Metzner, J. of August 2, 1976

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

X

SHEET METAL WORKERS' INTERNATIONAL ASSOC-
IATION, AFL-CIO,

76 CIV 2279 (CMM)

Plaintiff,

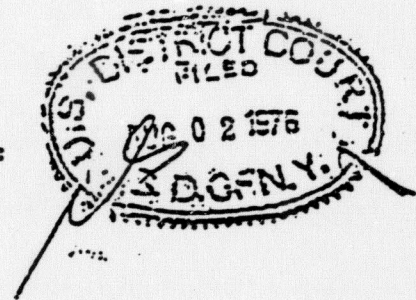
v.

: COUNTER ORDER

LOUIS COMMARATO, PRESIDENT and BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION
AFL-CIO, JOHN M. VAUGHN, FINANCIAL SECRE-
TARY OF LOCAL UNION 400, SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO;
FRANCES MAIDA, RECORDING SECRETARY OF LOCAL
UNION NO. 400, SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION, AFL-CIO; AND LOCAL
UNION NO. 400, SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION, AFL-CIO,

Defendants.

X



Upon the summons, complaint, exhibits, affidavits,
memoranda of law and all other papers on file herein, and upon plaintiff's
application for a preliminary injunction and upon the findings of
fact and conclusions of law as set forth by the Court in its Decision,
signed on July 21, 1976, it is hereby

ORDERED, pending conclusion of the trial herein, and
conditioned upon the plaintiff's filing a surety bond in the amount
of \$ 500, wherein the surety and plaintiff do jointly and
severally undertake and promise that they will pay all costs and
disbursements that may be decreed to the defendants and the damages
that they may sustain by reason of the preliminary injunction, if
the same be wrongful or without sufficient cause, that the above-
named defendant Local Union No. 400, Sheet Metal Workers' International
Association, AFL-CIO, their officers, employees and agents are re-
strained and enjoined from:

1. Taking any official action on behalf of Local Union
No. 400, Sheet Metal Workers' International Association, AFL-CIO,
except upon approval of General President Edward J. Carlough or his
personal representative;

Counter-Order of Metzner, J. of August 2, 1976

2. Refusing to recognize and be bound by the order of trusteeship issued by Edward J. Carlough, General President of Sheet Metal Workers' International Association, AFL-CIO;

3. Refusing to recognize and be bound by the assumption of control by Daniel Pasquinucci, as Representative of General President Carlough and Trustee over Local Union No. 400, pursuant to said order of trusteeship;

4. Refusing to turn over all monies, books, records and property of Local Union No. 400 to Daniel Pasquinucci as said Representative and Trustee;

5. Refusing to vacate the office of Local Union No. 400 at 1435 Broadway, New York, New York, upon the direction of Daniel Pasquinucci.

DATED: NEW YORK, N.Y.
~~JULY 28, 1976~~

CLM Aug 2, 1976

Charles M. Metzner

CHARLES M. METZNER
UNITED STATES DISTRICT JUDGE

CS

Plaintiff's Proposed Order for Injunction

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO,

Plaintiff,

v.

LOUIS COMMARATO, PRESIDENT and BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION
AFL-CIO, JOHN M. VAUGHN, FINANCIAL SECRETARY
OF LOCAL UNION 400, SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO;
FRANCES MAIDA, RECORDING SECRETARY OF LOCAL
UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO; AND LOCAL
UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Defendants.
-----x

76 Civ. 2279
CM

ORDER

Upon the summons, complaint, exhibits, affidavits, memoranda of law and all other papers on file herein, and upon plaintiff's application for a preliminary injunction and upon the findings of fact and conclusions of law as set forth by the Court in its Decision, signed on July 21, 1976, it is hereby

ORDERED, pending conclusion of the trial herein, that the above-named defendants Louis Commarato, President and Business Manager of Local Union No. 400, Sheet Metal Workers International Association, AFL-CIO, John M. Vaughn, Financial Secretary of Local Union No. 400, Frances Maida, Recording Secretary of Local Union No. 400, and Local Union No. 400, Sheet Metal Workers' International Association, AFL-CIO, their officers, employees and agents are restrained and enjoined from:

1. taking any official action on behalf of Local Union No. 400, Sheet Metal Workers' International Association,

Plaintiff's Proposed Order for Injunction

APL-CIO, except upon approval of General President Edward J. Carlough or his personal representative;

2. refusing to recognize and be bound by the order of trusteeship issued by Edward J. Carlough, General President of Sheet Metal Workers' International Association, AFL-CIO;

3. refusing to recognize and be bound by the assumption of control by Daniel Pasquinucci, as Representative of General President Carlough and Trustee over Local Union No. 400, pursuant to said order of trusteeship;

4. refusing to turn over all monies, books, records and property of Local Union No. 400 to Daniel Pasquinucci as said Representative and Trustee;

5. refusing to vacate the office of Local Union No. 400 at 1435 Broadway, New York, New York, upon the direction of Daniel Pasquinucci; and

6. advocating secession from plaintiff or encouraging or inducing any other action intended to prevent or frustrate compliance with the order of trusteeship herein.

CHARLES M. METZNER
UNITED STATES DISTRICT JUDGE

Affidavit of Daniel G. Pasquinucci, dated August 13, 1976, in Support
of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Plaintiff,

v.

LOUIS COMMARATO, PRESIDENT AND BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION
AFL-CIO; JOHN M. VAUGHN, FINANCIAL SECRE-
TARY OF LOCAL UNION NO. 400, SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION, AFL-
CIO; FRANCES MAIDA, RECORDING SECRETARY
OF LOCAL UNION NO. 400, SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO; AND LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO,

Defendants.

AFFIDAVIT

76 Civ. 2279
(CMM)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

DANIEL G. PASQUINUCCI, being duly sworn, deposes
and says:

1. I am an International Organizer of the plain-
tiff Sheet Metal Workers' International Association (SMWIA),
AFL-CIO and am the representative and trustee duly appointed
to supervise and direct the control and management of
defendant Local 400.

2. I make this affidavit in support of plaintiff
SMWIA's application for an order holding defendants in civil
contempt of the order of this Court.

3. On August 2, 1976, this Court signed an order
preliminarily enjoining defendants from, inter alia,

Affidavit of Daniel G. Pasquinucci, dated August 13, 1976, in Support
of Motion

- "1. Taking any official action on behalf of Local 400, Sheet Metal Workers' International Association, AFL-CIO, except upon approval of General President Edward J. Carlough or his personal representative;
2. Refusing to recognize and be bound by the order of trusteeship issued by Edward J. Carlough, General President of Sheet Metal Workers' International Association, AFL-CIO.
3. Refusing to recognize and be bound by the assumption of control by Daniel Pasquinucci, as Representative of General President Carlough and Trustee over Local Union No. 400, pursuant to said order of trusteeship;
4. Refusing to turn over all monies, books, records and property of Local Union No. 400 to Daniel Pasquinucci as said Representative and Trustee."

A copy of this Court's Order is annexed hereto as Exhibit A.

4. The order of trusteeship referred to in the preliminary injunction was issued on May 12, 1976 by SMWIA General President Edward J. Carlough and directed me "to impound the books, records, funds and property of Local 400." A copy of the trusteeship order is annexed hereto as Exhibit B.

5. On August 10, 1976, I directed that defendant Louis Commarato, pursuant to the preliminary injunction, give me all of Local 400's documents relating to any health, welfare and/or pension trust funds or plans in which members of Local 400 and the employees with whom it has collective bargaining agreements participate. Mr. Commarato refused to give me these Local 400 documents, stating that he would not do so unless directed by his counsel.

Affidavit of Daniel G. Pasquinucci, dated August 13, 1976, in Support
of Motion

6. On August 12, 1976, I renewed this request by sending by certified mail a note to Mr. Commarato and a copy of this Court's August 2, 1976 order which had previously been sent to Mr. Commarato's attorney, Charles P. Katz. This note is annexed here to as Exhibit C.

7. On August 13, 1976, my counsel, COHEN, WEISS and SIMON, received a letter from Mr. Katz confirming Mr. Commarato's refusal to comply with my request for the documents. Mr. Katz's letter is annexed hereto as Exhibit D.

8. I have been told by Mr. Commarato that he is the full-time administrator of the Local 400 Welfare Fund, whose office is at 1435 Broadway, the same address from which he operated Local 400, and that his expenses, including his automobile, had been shared by Local 400 and the funds.

9. On July 26, 1976, shortly after this Court handed down its opinion of July 21, 1976 indicating that it would issue a preliminary injunction in this case, Mr. Commarato resigned as President of Local 400, as did the other defendants from their positions with Local 400.

10. An examination of the collective bargaining agreements between Local 400 and several employers, shows that employers are required to forward a sum equal to from 5% to 6% of employees' gross weekly earnings to the Union office as contributions to a "Welfare Fund". Similarly, employers are required to forward a sum equal to from 3% to 4% of employees' gross weekly earnings directly to the Union office as contributions to a "Sheet Metal Production Pension Fund". The collective bargaining agreement states that money so received is to be used

Affidavit of Daniel G. Pasquinnucci, dated August 13, 1976, in Support
of Motion

by Local 400 for a Welfare Fund and a Pension Fund. The collective bargaining agreements provide for the preparation and execution of instruments to govern the operation of these Funds entitled "Agreement and Declaration of Trust" and "Welfare Articles". Annexed hereto as Exhibits E, F and G are copies of the relevant portions of collective bargaining agreements concerning employers' contributions to the funds contained in the contracts between Local 400 and three employers: Industrial Acoustics Company, Inc., Flush-Metal Partition Corp., and The Greater New York Industrial Sheet Metal Contractor's Association, Inc.

9. I must have copies of all documents pertaining to the Welfare Fund and the Sheet Metal Production Pension Fund if I am effectively to protect the interests of the membership of Local 400 and oversee the affairs of Local 400 in accordance with the trusteeship and the mandate of this Court. These documents are essential to ascertaining the identify of the trustees of these funds and the manner in which they are chosen. I must be able to determine if the trustees are adequately protecting the interests of the membership of Local 400, and if any trustees should be replaced, and the role of the of the union in replacing them. Similarly, these documents are essential in determining whether the contributions remitted in the past have been used to provide welfare and pension benefits for the members of Local 400, or for some other purpose.

10. Furthermore, there appears to be the possibility of criminal violations of Section 302 (restrictions on payments to employee representatives) of the Labor Management Relations Act (29 USC §§186 et seq.)

Affidavit of Daniel G. Pasquinnucci, dated August 13, 1976, in Support of Motion

in that the funds in question are paid under the contract directly to the union rather than to a jointly administered trust fund satisfying the requirements of Section 302(c)(5) of the LMRA. Thus, the critical need for a full and complete investigation into the finances and structure of Local 400 can only be met if I obtain all trust agreements, pension and welfare plans and Rules and Regulations, and all amendments thereto, bankbooks, and related documents.

11. The trusteeship, and this Court's Order in aid of it, have the orderly, lawful and proper administration of Local 400 as their goal, but that objective cannot be reached if the defendants are permitted to circumvent the clear intention of the order of the Court. These trust agreements and related papers are essential and basic records and property of Local 400. If the same individuals operated the funds and Local 400 and from the same premises, the removal of records and documents into separate quarters does not change the fact that these records are the records of Local 400. And the fact that the funds might be separate legal entities does not alter the Local Union's entitlement to possession of copies of those instruments which are signed by Local 400 officials and intended for the benefit of Local 400 members. Nor does the fact that Local 400 officials resigned after the Court rendered the opinion in this case allow them to avoid the obligations of this Court's order. The defendants here are defying the order of this Court, and further exercise of the power of the Court is therefore required.

Affidavit of Daniel G. Pasquinucci, dated August 13, 1976, in Support
of Motion

12. No prior request for the relief sought
herein has been made.

WHEREFORE, I respectfully request that the
defendants be adjudicated in civil contempt of court as set
forth in the order to show cause filed herewith.

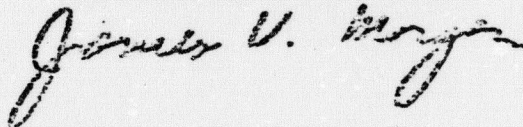


Daniel G. Pasquinucci

Sworn to before me this

13th day of *August* 1976.

JAMES V. MORGAN
Notary Public, State of New York
No 31-4616906
Qualified in New York County
Commission Expires March 30, 1977



Affidavit of Richard L. Hartz, dated August 13, 1976, in Support of
Plaintiff's Motion to Adjudicate Defendants in Civil
Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Plaintiff,

-against-

LOUIS CONNAPATO, PRESIDENT and BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO;
JOHN M. VAUGHN, FINANCIAL SECRETARY OF LOCAL
UNION NO. 400, SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO; FRANCES MAIDA, RECORD-
ING SECRETARY OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO; and LOCAL UNION NO. 400, SHEET METAL
WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO,

Defendants.

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CMH

: AFFIDAVIT

RICHARD L. HARTZ, being duly sworn, deposes and says:

1. I am an attorney associated with the offices of
COHEN, WEISS and SIMON, attorneys for plaintiff Sheet Metal
Workers' International Association, AFL-CIO (SMWIA).

2. I make this affidavit in support of plaintiff's
application for an order holding defendants in civil contempt
of the order of this Court.

3. On August 2, 1976, United States District Judge
Charles Metzner signed an order enjoining the above named
defendants from, inter alia, refusing to be bound by the SMWIA's
order of trusteeship; refusing to be bound by the assumption of
control by trustee Daniel Pasquinucci; and refusing to turn
over all monies, books, records and property of Local 400 to
trustee Daniel Pasquinucci. A copy of this Court's order is
annexed to the affidavit of Daniel Pasquinucci, filed herewith.

Affidavit of Richard L. Hartz, dated August 13, 1976, in Support of Plaintiff's Motion to Adjudicate Defendants in Civil Contempt.

4. On August 10, 1976, I received information from trustee Pasquinucci that defendant Louis Commarato had refused his request, pursuant to this Court's order, to turn over to him as trustee of Local 400 all books and documents relating to Local 400 welfare funds and pension funds.

5. I immediately telephoned the offices of Charles R. Katz, Esq., attorney for defendants herein, explained the situation to Rick Greenspan, Esq., of that office, and was informed that Mr. Katz was out of town, and that I would hear from him the next day.

6. On August 11, 1976, I spoke with Mr. N and explained the situation, advising him that Mr. Pasquinucci's demand for the documents was within both the terms of the trusteeship and the Court's order. Mr. Katz stated that he would confer with his client and call me back the next day.

7. On August 12, 1976, I spoke with Mr. Katz who informed me that Mr. Commarato would not comply with Mr. Pasquinucci's request.

8. On August 13, 1976, I received a letter from Mr. Katz confirming Mr. Commarato's refusal. This letter is annexed to the affidavit of Daniel Pasquinucci, filed herewith.

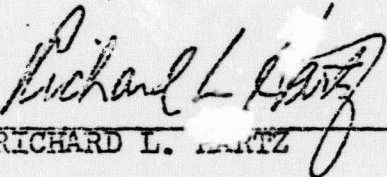
9. In light of the foregoing, and in view of the affidavit of trustee Daniel G. Pasquinucci, filed herewith, it is submitted that the defendants are clearly violating and defying the order of this Court by refusing to be bound by the trusteeship, and by refusing to turn over all the records and documents belonging to Local 400.

RLH
9A. An order to show cause is necessary because the purposes of the trusteeship require account to the documents as soon as possible.

Affidavit of Richard L. Hartz, dated August 13, 1976, in Support of Plaintiff's Motion to Adjudicate Defendants in Civil Contempt.

10. No previous application for the relief requested herein has been made.

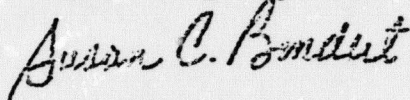
WHEREFORE, I respectfully request that the defendants be adjudicated in civil contempt of court as set forth in the order to show cause filed herewith.



RICHARD L. HARTZ

Sworn to before me this

13th day of August, 1976



SUSAN C. BINDERT
Notary Public, State of New York
No. 41-4331158
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1977

Affidavit of Louis Commarato of August 18, 1976 in Opposition to
Plaintiff's Motion for Civil Contempt

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X
SHEET METAL WORKERS' INTERNATIONAL :
ASSOCIATION, AFL-CIO,

76 CIV 2279

Plaintiff,

C M M

-against-

LOCAL UNION NO. 400, SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION, AFL-CIO,

AFFIDAVIT IN OPPOSITION TO
PLAINTIFF'S APPLICATION TO
ADJUDICATE DEFENDANTS IN
CIVIL CONTEMPT OF COURT

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

LOUIS COMMARATO, being duly sworn, deposes and says:

I am the former president of defendant Local Union
No. 400 and make this affidavit in opposition to plaintiff's appli-
cation to adjudicate defendants in contempt of court.

The order of this Court provides that the defendant
Local Union No. 400, Sheet Metal Workers' International Associa-
tion, AFL-CIO, their officers, employees and agents, are enjoined
from refusing to turn over all monies, books, records and property
of Local Union No. 400 to Daniel Pasquinucci. In fact, all monies,
books, records and property of defendant Local Union No. 400 have
been turned over. The documents plaintiff seeks are documents re-
lating to Welfare and Pension Trust Funds, distinct and separate
legal entities. These Trust Funds are not parties to these pro-
ceedings.

Affidavit of Louis Commarato of August 18, 1976 in Opposition to
Plaintiff's Motion for Civil Contempt

The funds are collectively bargained multi-employer Welfare and Pension Trusts authorized by Section 302 of the Labor Management Relations Act, and are separate, distinct entities from defendant Local Union No. 400; they are independently administered by their respective trustees. These records are not business records of Local Union No. 400. Plaintiff has not alleged, nor has he requested these documents from the respective Funds and by this proceeding seeks these documents from the defendant Local Union.

The Exhibits attached to Mr. Pasquinucci's affidavit clearly show that demand was made upon me, not the respective Funds. The claim for the Trust Fund documents are the sole basis for the instant application and no other alleged violation of this Court's order has been set forth in the affidavits of Daniel G. Pasquinucci and Richard L. Hartz, sworn to August 13, 1976, in support of the instant contempt proceedings.

I am no longer an officer of defendant Local Union, nor am I an employee or agent of the defendant Local Union. I resigned from my position as President and am no longer employed by defendant Local Union in any capacity. Furthermore, this Court dismissed plaintiff's claim against me. See Exhibit "1" attached hereto. The other former officers of the defendant Local Union have also resigned from their positions. Plaintiff's papers intimate that I have not complied with the Court order. This is not so. The order is not against me personally, the defendant Local Union has turned over

Affidavit of Louis Commarato of August 18, 1976 in Opposition to
Plaintiff's Motion for Civil Contempt

all of its business records to Daniel Pasquinucci as provided for in this Court's order and fully complied with the order. The materials plaintiff seeks herein are not books and records of Local Union 400, but of separate legal entities.

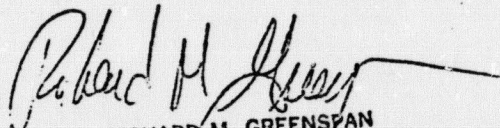
Plaintiff seeks to be held in contempt for the alleged violation of this Court's order "defendants". Since the Court dismissed the complaint against the individual defendants, the only defendant remaining is Local Union 400. Since July 26, 1976, I have not been an officer or employee of Local Union 400.

WHEREFORE, deponent prays that plaintiff's application be denied, and that judgment be entered against complainant for costs and reasonable counsel fees.



LOUIS COMMARATO

Sworn to before me this
18th day of August, 1976.



RICHARD M. GREENSPAN
NOTARY PUBLIC, State of New York
No. 60-4628242
Qualified in Westchester County
Commission Expires March 30, 1978

Order of Werker, J. entered August 23, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO,

Plaintiff,

-against-

LOUIS COMMARATO, PRESIDENT AND BUSINESS
MANAGER OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION
AFL-CIO, JOHN M. VAUGHN, FINANCIAL
SECRETARY OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO; FRANCES MAIDA, RECORDING
SECRETARY OF LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO; AND LOCAL UNION NO. 400, SHEET
METAL WORKERS' INTERNATIONAL ASSOCIATION,
AFL-CIO,Defendants.
-----X

76 Civ. 2279 (CMA)

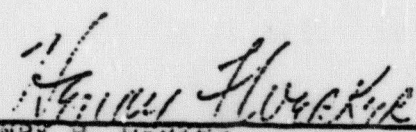
ORDER

Upon the summons, complaint, exhibits, affidavits, oral arguments, memoranda of law and all other papers on file herein, and upon plaintiff's application for an order adjudicating defendants in civil contempt, it is hereby

ORDERED that Louis Commarato and other defendants herein fully comply with the order of preliminary injunction rendered by this Court on August 2, 1976 (Hon. Charles M. Metzner) and, pursuant to the same, deliver forthwith to Local Union No. 400 trustee Daniel G. Pasquinucci all documents, agreements, trust indentures, plans of benefits, rules and regulations, all amendments or modifications thereto, and other papers relating to all health, welfare and/or pension funds which are or have ever been provided for in collective bargaining agreements of Local Union No. 400.

Dated: New York, New York

August , 1976


HENRY F. WERKER
United States District Judge

FILED AUGUST 23, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

SCOTT ALVINO, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 5701-15 AVE BROOKLYN

That on the 8 day of NOVEMBER, 1976,
deponent personally served the within JOINT APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

COHEN WEISS & SIMON
ATTORNEYS FOR PLAINTIFF APPELLEE
605 THIRD AVE.
NEW YORK, N.Y. 10017

Sworn to before me this

8th day of November, 1976

Scott Alvino
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1978 77